



LAY OFF

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From UILS, PU*

INTRODUCTION

In the day-to-day running of business, management is often compelled to take measures to effect economy and avoid waste. Some of these actions have a direct bearing on the workmen employed by it. It may sometimes happen that an employer does not temporarily need the services of the normal strength of the workmen. He may well terminate the services of the surplus workmen. But because he expects to resume his normal work and the workmen wish to continue to work, the institution of lay-off has been evolved.

MEANING OF LAY-OFF

The term 'lay-off' has been defined under Section 2 (kkk) of the Industrial Disputes Act, 1947. Lay-off means the failure, refusal, or inability of an employer on account of the shortage of coal, power or raw materials or the accumulation of stocks or the breakdown of machinery or natural calamity or for any other unconnected reason to give employment to a workman whose name is borne on the muster rolls of his industrial establishment and who has not been retrenched.

Herein the workers are not discharged, but nevertheless, they do not receive their full wages. Lay-off is a measure to cope with the temporary inability of an employer to offer employment to a workman to keep the establishment as going concern.¹ It results in

immediate unemployment though temporary in nature. It does not put an end to the employer-employee relationship, nor does it involve any alteration in the conditions of service.

Further, lay-off occurs only in a continuing business. When the industrial establishment is closed permanently or it lock-out is declared by the employer, the question of lay-off has no relevance. Lay-off is justified only when it is in conformity with the definition given under Section 2 (kkk) of the Industrial Disputes Act.²

ESSENTIALS OF LAY-OFF

- 1) There must be failure, refusal or inability on the part of the employer to give employment to a workman.
- 2) The failure, refusal or inability should be on account of shortage of coal, power or raw materials or accumulation of stocks or breakdown of machinery, or natural calamity, or any other connected reason.
- 3) The workman's name should be on the muster rolls of the industrial establishment.
- 4) The workman should not have been retrenched.

The explanation given to this section further provides that if a worker whose name is borne on the muster roll of the industrial establishment and who presents himself for work during normal hours on any day, and he is not given employment within two hours of

¹ G. Shashi Kumar v. Management of Indian Industries, 1998 Lab IC 3297

² Meenu Paul; Labour and Industrial Law; Allahabad Law Agency; 2016



his so presenting himself, he is said to be laid-off for the day.

But if he is asked to present himself during the second half of the shift and is given employment, he is deemed to be laid-off for half the day. However, if the workman is not given employment even after presenting himself at the commencement of the second half of the shift, he is deemed to have been laid-off for the full day.

Further, Section 25A of the Act provides clearly that the provisions of the Industrial Disputes Act, 1947 relating to lay-off and retrenchment compensation do not apply to the following three types of industrial establishments:

1. An industrial establishment in which less than fifty workmen on an average per working day have been employed in the preceding calendar month
2. Industrial establishments which are of a seasonal character or in which work is performed only intermittently
3. Industrial establishments to which chapter V-B applies as inserted by the Industrial Disputes Amendment Act, 1976.

CONTINUOUS SERVICE

The right to compensation under the Act accrues to a workman only if he has put in at least **'one year of continuous service.'** Section 25B defines what amounts to continuous service. A workman is said to be in continuous service if he is for that period in uninterrupted service.

³ **P. R. Bagri; Law of industrial disputes: commentary on the Industrial Disputes Act, 1947; Eastern Law House, 1972**

Interruption on account of sickness, authorised leave, an accident, a strike which is not illegal, a lock and a cessation of work which is not due to the fault of the workman should not be taken into consideration for calculating the period of continuous service.³

Even if a workman has not been in continuous service for a period of one year, he shall be deemed to be in continuous service for the period of one year if he satisfies the following two conditions:

1. He was in employment for twelve calendar months preceding the date with reference to which calculation is to be made, and
2. During such twelve months, he actually worked for not less than (a) one hundred and ninety days in the case of employment in a mine, and (b) two hundred and forty days in any other case.

According to the explanation of this section, for the purpose of calculating the number of days on which a workman has actually worked under an employer, the following days shall be included:

1. The days on which he has been laid-off under an agreement or standing orders or under this Act or under any other law applicable to the industrial establishment
2. The days on which he has been on earned leave
3. The days on which he has been absent due to temporary disablement due to an accident arising out of and in the course of his employment



4. In the case of a female worker, the days on which she has been on maternity leave, not exceeding twelve weeks.

COMPENSATION FOR LAY-OFF (Rights of Workmen):

According to Section 25C of the Industrial Disputes Act, 1947 a workman who is laid-off is entitled to compensation equivalent to 50 per cent of the total basic wages and dearness allowance for the period of lay-off.

This right of compensation is, however, subject to the following conditions:

- 1) He is not a badli or a casual workman: A badli workman means a workman who is employed in place of another workman whose name is borne on the muster rolls of the establishment. However, such a workman ceases to be a badli workman on his completion of one year of continuous service in the establishment.
- 2) His name should be borne on the muster rolls of the establishment.
- 3) He should have completed not less than one year of continuous service under the employer.

A workman is entitled to lay-off compensation at the rate equal to fifty per cent of the total of the basic wage and dearness allowance for the period of his lay off except for weekly holidays which may intervene. Compensation can normally be claimed for not more than forty-five days during any period of twelve months.

Even if lay-off exceeds forty five days during any period of twelve months no

⁴ **Om Prakash Malhotra; The Industrial disputes act, 1947; N. M. Tripathi, 1973**

compensation is required to be paid for the excess period if there is an agreement to that effect between the workman and the employer.

If the period of lay-off exceeds forty-five days, the employer has two alternatives before him, namely:

- 1) to go on paying lay-off compensation for such subsequent periods
- 2) to retrench the workman.

In case the employer adopts the second alternative, he is bound to comply with the provisions of section 25F. In case of such retrenchment, the employer is enabled to adjust the amount of lay-off compensation paid during the preceding 12 months against retrenchment compensation payable under section 25-F.⁴

The right of workmen to lay off compensation is designed to relieve the hardship caused by unemployment due to no fault of the employee. The provision for payment of compensation for lay-off does not mean that the employer can pay lay-off compensation and declare lay-off. Payment of compensation is not a condition precedent to lay-off.⁵

Where the lay-off is justified and it satisfies the requirements of the definition under Section 2(kkk), the only relief to which workmen laid off are entitled is the statutory relief prescribed by Section 25-C.

If the lay-off is malafide in the sense that it has been declared in order to victimise the workmen, it would not be lay-off justified under Section 2(kkk), and the relief provided

⁵ **S.C. Srivastava; Industrial Relations and Labour Laws, 6th Edition; Vikas Publishing House, 1990**



to the laid-off workmen under section 25-C would not be the only relief to which they are entitled.

DUTIES OF THE EMPLOYER IN CONNECTION WITH LAY-OFF

The following duties are laid down for the employer in connection with a lay-off:

- 1) The employer must maintain a muster roll of workmen and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours notwithstanding that workman in any industrial establishment have been laid off.
- 2) The lay-off must be for the reasons specified in Section 2(kkk).
- 3) The period of detention of workmen if stoppage occurs during working hours should not exceed two hours after the commencement of the stoppage.
- 4) The compensation for lay-off must be at the rate and for the period specified in Section 25-C of the Industrial Disputes Act.

CASES IN WHICH A WORKMAN IS NOT ENTITLED TO LAY-OFF COMPENSATION

The provisions of Section 25-E provide certain exceptions to the general rule for the payment of lay-off compensation. In other words even if the workman is laid off, he will be disentitled to claim compensation if his case falls within any of the three clauses of

this section. In the following cases, a worker who is laid-off will not be entitled to claim compensation.

I. Refusal to Accept Alternative Employment:

If a laid off workman refuses to accept alternative employment provided that such alternative employment is:

- a) In the same establishment from which he has been laid-off or
- b) In any other establishment belonging to the same employer situated in the town or village within a radius of five miles from the establishment to which he belongs,
- c) In the opinion of the employer the alternative employment does not call for any special skill or previous experience and can be done by the workman and
- d) It carries the same wages which would normally have been paid to the workman in his original employment.

II. Absence From the Establishment:

If the workman does not present himself at the appointed time during normal working hours at least once a day.

III. Strike or Go Slow:

If such laying-off is due to a strike or slowing down of production on the part of workmen in another part of the establishment.

SPECIAL PROVISION RELATING TO PROHIBITION OF LAY-OFF

Section 25 M (Chapter V B added to the Industrial Disputes Act, 1947 by the Industrial Disputes Amendment Act, 1976)



places certain restrictions on the right of the employer to lay-off workers.

However, for the application of this chapter, it is necessary that the industrial establishment must not be of a seasonal character or in that establishment work must not be performed intermittently and that the strength of workmen should not be less than one hundred.

Section 25 M lays down that no workman, other than a badli or a casual workman, whose name is borne on the muster rolls of an industrial establishment to which this chapter applies shall be laid off by his employer unless such lay-off is due to shortage of power or natural calamity, and in the case of a mine such lay-off is due also to fire, Hood, excess of inflammable gas or explosion.

He can lay-off the workman only with the prior permission of the appropriate government or such authority as may be specified by that government on an application made in this behalf (as amended by the Industrial Disputes Amendment Act, 1984).⁶

An application for permission shall be made by the employer in the prescribed manner stating clearly the reasons for the intended lay-off. A copy of such application shall also be served simultaneously on the workmen concerned.

Where the workmen other than badli workmen or casual workmen of a mine have been laid-off for reasons of fire, flood or excess of inflammable gas or explosion, the employer, shall within a period of thirty days

from the date of commencement of such lay-off apply to the appropriate government or specified authority for permission to continue the lay-off.

Where an application for permission has been made, the appropriate government or the specified authority shall make necessary enquiry as it thinks fit. It shall give a reasonable opportunity of being heard to the employer, the workmen concerned, and the persons interested in such lay off.

The appropriate government, having regard to the genuineness and adequacy of the reasons for such lay-off, to the interest of the workmen, and all other relevant factors by order and for reasons to be recorded in writing, grant or refuse to grant such permission. A copy of the order of the appropriate government or prescribed authority shall be communicated to the employer and the workmen.

Where an application for permission has been made, and the appropriate government or the specified authority does not communicate the order granting or refusing to grant permission to the employer, within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

An order of the appropriate government or the specified authority granting or refusing to grant permission shall be final and binding on all the parties concerned and shall remain in force for one year from the date of such order.

⁶ Supra Note 3



The appropriate government or the specified authority may either on its own motion or on the application made by the employer, or any workman, review its order granting or refusing to grant permission or refer the matter to a tribunal for adjudication.⁷ Where a reference has been made to a tribunal it shall pass an award within a period of thirty days from the date of such reference.

Where no application for permission has been made, or where the permission for any lay off has been refused, such lay-off shall be deemed to be illegal from the date on which the workmen had been laid off. The workmen shall be entitled to all the benefits under any law for the time being in force as if they had not been laid-off.

The appropriate government may, if it is satisfied that owing to exceptional circumstances as in case of accident in the establishment or death of the employer it is necessary so to do, by order direct that the provisions of sub-section (1) and (3) shall not apply in relation to such establishment for such period as may be specified.

A workman shall not be deemed to be laid-off under this section by an employer if such an employer offers any alternative employment to the workmen. The alternative employment in the opinion of the employer should not call for any special skill or previous experience and can be done by the workmen.

The offer of alternative employment should be in the same establishment from which he

has been laid-off or in any other establishment belonging to the same employer situated in the same town or village or situated within such distance from the establishment to which he belongs that the transfer will not involve undue hardship to the worker.

Further the wages which would have been paid to the workmen are offered for the alternative employment also.

LAY OFF AND LOCKOUT

Both have some common features. Both are the phenomena of a continuing business. Both are the acts of employers. Both involve subsisting employer-workmen relationship.

Supreme Court pointed out the difference between the two in the case of *Kairbetta Estate v. Rajmanickam*,⁸

1. Lay-off occurs in a continuing business while lockout is the closure of the business.
2. In case of lay-off owing to the reasons specified in Section 2 (kkk), the employer is unable to give employment to one or more workmen. In case of lockout, the employer closes the place of business and locks out the whole body of workmen for reasons which have no relevance to causes specified in Section 2 (kkk).
3. Lockout is an instrument of economic coercion. Lay-off on the contrary is an economic measure.
4. In lay-off, statute makes it obligatory on part of the employer to pay

⁷ **Kirpa Dayal Srivastava; Commentaries on Industrial Disputes Act, 1947, Act no. XIV of 1947; Eastern Book Co., 1960**

⁸ (1960) 2 LLJ 275 (SC)



compensation in accordance with the provisions of the Act, 1947. In case of lockout, it is discretionary with the tribunals to grant wages for the period of lockout depending upon the situations.

LAY-OFF AND RETRENCHMENT:

1. In case of lay-off, there is subsisting employer-workmen relationship while in case of retrenchment, that relationship is terminated.
2. Lay-off is temporary whereas retrenchment is a permanent measure.

